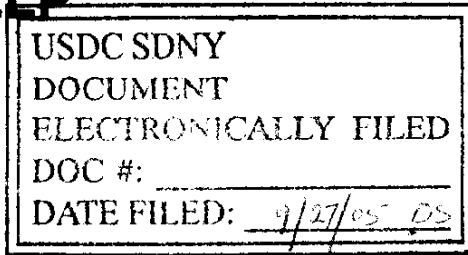


# GERSTEN SAVAGE LLP

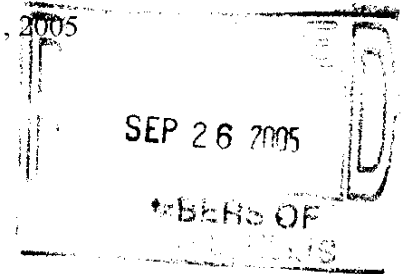


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September 23, 2005

VIA OVERNIGHT DELIVERY

The Honorable Ronald L. Ellis  
United States Magistrate Judge  
United States Courthouse  
500 Pearl Street, Room 1970  
New York, NY 10007



Re: Merit Capital Group, LLC v. Trio Industries Management, LLC, et al.  
Case No. 04 CIV 7690 (RCC)

Dear Judge Ellis:

My firm represents plaintiff Merit Capital Group, LLC and third-party defendants Harvey Bloch and Alfred Salazar ("plaintiff").

On behalf of all parties, I am writing to respectfully request pursuant to Rule 1(E) of Your Honor's Individual Practices, that the parties' time to complete depositions be extended because of the parties' and lawyers' unavailability as well as the upcoming Jewish holidays.

Plaintiff's two principals have been out of state on business, and unfortunately will continue to be out of state and unavailable, until early to mid-October. In the beginning of October, on October 4 and 5, I cannot be in the office due to the Jewish High Holiday, Rosh Hashanah, and I have oral arguments at the Appellate Division, First Department, on October 6. The following week, again, I cannot be in the office due to Yom Kippur. In any event, counsel for defendants/third-party plaintiffs ("defendants") has advised me that he is unavailable because he will be out of the country for almost two weeks, beginning on October 7, and the following week he is engaged in an arbitration.

Counsel for all parties have conferred and jointly request that the current deposition deadline of October 14, 2005 be extended for 30 days, to November 14, 2005. Although all parties wish to move this case forward (particularly my client, the plaintiff), we are reluctantly compelled to write the Court – sufficiently in advance of the current deposition deadline, which was extended twice before due to certain now-resolved discovery disputes – since we know that we cannot realistically complete depositions by the current deadline for the reasons stated above. Depositions are now the only remaining item to be completed, and we do not anticipate the need to make any further applications in this regard.

## GERSTEN SAVAGE LLP

The Honorable Ronald L. Ellis  
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There is one additional issue that the parties wish to bring to the attention of the Court. Defendants' counsel has informed me that one of his clients, Evan Daniels, who resides out of state, does not wish to appear personally in New York City for his deposition due to claimed "financial hardship," but rather wishes to appear by video-conference. Plaintiff does not consent to defendants' proposal because not only has no evidence of Mr. Daniels' purported hardship been presented, but in any event it would work an unfair prejudice on plaintiff, who has a right to question Mr. Daniels, a party, live and in this district, and because Mr. Daniels caused the corporate defendants to file a third-party complaint against my clients – in this district. Mr. Daniels, who has not filed a motion for any relief, should be deposed in New York City like plaintiff and the other out-of-state defendants. It appears that a conference with the Court may be necessary to resolve this issue, if the Court is agreeable to entertaining such a conference.

For the reasons stated above, the parties respectfully request that the deadline to complete depositions be extended to November 14, 2005.

Your Honor's attention and consideration of this matter is greatly appreciated.

Respectfully submitted,




Marc R. Rosen

cc: Imtiaz A. Siddiqui, Esq. (via overnight delivery)

*Depositions may be  
taken up to November 14, 2005  
Parties should be deposed in  
this district except upon  
order of Court.*

SO ORDERED

 9-27-05  
MAGISTRATE JUDGE RONALD L. ELLIS